



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,251	09/29/2003	William H. Berger		3183

7590 08/05/2005
Ruth Eure
4795 Edison Avenue
Boulder, CO 80301

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
----------	--------------

3751

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,251

Applicant(s)

BERGER, WILLIAM H.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3751

1. The drawings are objected to because reference numerals "30" and "32" denote different elements in Figs. 5-7, material cross-hatching is inaccurate in Fig. 6, and there is no "Fig. 1" (Rule 1.84(u)(1)).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claims 2, 7/10 and 14, and the "intake portion" and "outlet portion" set forth in claims 12 and 13, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the

Art Unit: 3751

filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "parallel circular disc sides" set forth in claim 2, "means for heating" set forth in claim 7/10, and "method" and "providing" language set forth in claim 16, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

3. The disclosure is objected to because of the following informalities: Page 8, line 9 and page 9, line 8, "32" designates different elements.

Appropriate correction is required.

4. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in

the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Implementation of the "water moving apparatus" set forth in claim 1 is neither disclosed nor evident to the examiner. The "outlet port" of the pump as illustrated in Fig. 1 does not appear capable of directing water toward the vanes as illustrated in Fig. 7. The structure of the paddle wheel to enable it to rotate is not disclosed. The pump as presented on the ITT Industries web site has been reviewed, but does not clarify the disclosure. A copy of a page from the website is included herewith.

5. Claim 7/10 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "means for heating". Implementation of this subject matter is neither disclosed nor evident to the examiner.

6. Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in

Art Unit: 3751

the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 8 recites a "plunger knob" 34. Implementation of this subject matter is neither disclosed nor evident to the examiner. The "valve plate lifter 32" illustrated in Fig. 6 appears to engage the pump intake port 20. The structure of the paddle wheel to enable it to be lifted is not disclosed.

7. Claims 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite a nozzle 16 having an "intake portion" and an "outlet portion". Implementation of this subject matter is neither disclosed nor evident to the examiner.

8. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is redundant to claim 7.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3751

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 4-6, 8, 9, 11, 12, 14 and 16, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kah, Jr. et al. and Kah, Jr.

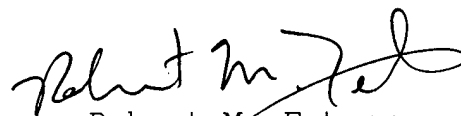
The Kah, Jr. et al. ('560) reference discloses a water moving apparatus comprising: a paddle wheel 42 including vanes 60 and an opening 56; a plunger knob 52; a nozzle 30. Re claim 6, the initial statement of intended use (pedicure foot bath), and all other functional implications related thereto, have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by '560. Re claim 14, the '560 opening is perpendicular in the same sense as with applicant's disclosed invention. Therefore, '560 teaches all claimed elements except for the provision of a pump.

Art Unit: 3751

Although the '560 sequencing valve does not include a pump, as claimed, attention is directed to the Kah, Jr. ('480) reference which discloses an analogous sequencing valve which further includes a pump 140 (Fig. 5). Therefore, in consideration of '480, it would have been obvious to one of ordinary skill in the sequencing valve art to associate a pump with the '560 sequencing valve as being one well known source of pressurized water which is required for use with the '560 valve.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
Art Unit 3751